

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO BARROS Y BALTAZAR, ACCUSED-APPELLANT.*G.R. Nos. 101107-08. June 27, 1995*

Ponente: NARVASA, C.J.

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This is an old case, going back to May 14, 1984 which, it may be recalled, was the day set by law for the election of representatives of the former legislature, the Batasang Pambansa. It would seem, however, that the elections were not the primary concern of Romeo Barros, the number one councilman of Poblacion, Tubao, La Union, and designated election watcher, it was, apparently, the extermination of his enemy, Tubao Vice-Mayor Gregorio "Gene" Mapalo Jr.

As early as 9 o'clock in the morning of that day, Barros went to Mapalo's house, and very shortly thereafter gunshots rang out. This brought Reynaldo Gonzales, a neighbor of Mapalos, to the gate at the rear of his home. He saw Romeo Barros walking down the road behind the Mapalo residence, a gun tucked at his waist. Evidently Reynaldo had foreknowledge of Barros' sinister intent against Mapalo, for the first question he asked was: "Did you get him?" The quick reply was, "He was able to fly. I will kill Gene." Reynaldo says that he then attempted to dissuade Barros from carrying out his malevolent design by suggesting that he attend to his job as election watcher. Barros ignored him and walked away.[1]

Reynaldo Gonzales saw Barros again later that morning, at about 11:30 o'clock. Reynaldo was then seated at his father's store, located adjacent to their house. Nearby, another person, Mariden Milanes, was tending her own store fronting the main road of the Poblacion. Both Reynaldo and Mariden noticed Barros sauntering up the road coming from the North. They saw that after passing the Gonzales store, and while in front of the Gonzaleses' residence, Barros pointed a small gun held in his fist towards the south of the road and fired three successive shots in the direction of the house of Vice-Mayor Gregorio Mapalo, Jr. They both also heard Barros shouting invectives in the local dialect against Vice-Mayor Mapalo, and challenging him to come out of the house to confront him (Barros), after which Barros reloaded his gun.

The gunshots turned the attention of Isabelo Gonzales (Reynaldo's father) to the place where Barros was. He saw his son, Reynaldo, talking to Barros, attempting to deter the latter from carrying out his nefarious objective. Isabelo heard his son say to Barros, "That's enough," and "Never mind that." Barros however continued to hurl imprecations against Vice-Mayor Mapalo and to demand that he come out. Then, as Isabelo, Reynaldo Gonzales, and Mariden Milanes watched, Barros again raised his gun and fired three more shots towards the house of Vice-Mayor Mapalo.

When the first three shots were fired at the Mapalo bungalow a few minutes earlier, Mrs. Lydia Mapalo, the wife of Vice-Mayor Mapalo, immediately dashed out of her room to the sala. There she saw her son, Jojo, and her daughter; they said they were probably the target of the gunshots for the jalousies of the window at the northern wall of their house had been shattered. She peered through that window and saw Romeo Barros re-loading his

gun, shouting curses, raising the gun, aiming it at their house, and firing three more shots.

As the sound of the gunshots was dying out, Lydia became aware of her son Jojo falling face down on the floor, blood oozing from his nose. She began shouting for help, and became quite hysterical. Her screams and the sounds of commotion in the Mapalo residence following the second group of shots were heard by the Gonzaleses, father and son, and Mariden. They heard people shouting: Jojo was gone, Jojo was dead.

Police Chief Ricardo Fronda rushed to the Mapalo bungalow. He had heard the first three gun shots, while in his office around thirty (30) or forty (40) meters away, and correctly surmised that they had come from the vicinity of the Mapalos' house. The first thing Fronda saw was Jojo Mapalo lying prone on the floor of the sala, blood flowing profusely from his head. Fronda instructed Lydia to bring her son to the hospital. Immediately, Lydia's relatives took Jojo to the Doña Gregoria Memorial Hospital.

Vice-Mayor Mapalo soon arrived at his house, and he and his wife immediately proceeded to the hospital. There they were advised to rush their son to the Baguio General Hospital. It was too late. Jojo Mapalo was already dead. His death was officially pronounced by the doctors at 2:15 p.m. that same day, due to "intracranial hemorrhage, massive, secondary to gunshot wound with brain tissue maceration." [2]

Meanwhile, Chief Fronda examined the Mapalos' house and found: (a) a superficial bullet hole on the concrete south wall; (b) two (2) or three (3) broken slats or blades of the glass jalousies of the window of the north wall; (c) a slug about a meter from the superficial bullet hole, inside the house and below the broken jalousies; and (d) a bullet hole in the canvas roof of the garage outside the house. [3]

Frona then proceeded to the residence of Romeo Barros, being informed that the latter had just been seen there. He requested permission to search the house, and Romeo and his brother, Rolando, nodded their heads in assent. The search was conducted in the presence of barangay officials, and yielded a .38 caliber Smith & Wesson revolver with serial number J219345, one round of live ammunition, and three "empty/spent" shells. The gun was found atop a rooster coop or cage at the back of the house, inconspicuously covered with a cardboard box.

Separate criminal actions for murder (with the qualifying circumstances of treachery and evident premeditation alleged to be present in the commission of the crime) and illegal possession of firearm were thereafter commenced against Romeo Barros y Baltazar in the Regional Trial Court of Agoo, La Union, [4] docketed as Criminal Cases Nos. A-1381 and A-1389, respectively. The cases were jointly heard, having arisen from a single incident involving the same accused.

The State's evidence, which substantially tended to establish the facts and circumstances just related, consisted chiefly of the testimony of Mariden Milades, Isabelo Gonzales, Reynaldo Gonzales, Lydia Mapalo, Police Chief Fronda. The following expert witnesses were also presented:

- (1) Dr. Juan A. Redor, Jr. who testified on his findings at the post-mortem examination conducted by him, to wit: the presence of a gun shot wound on the occipital area of Jojo Mapalo's brain measuring one (1) cm. through and through, and a slug, recovered from beneath the skin on the right occipital region. [5]
- (2) Ireneo S. Ordiano, Jr., a senior Ballistician of the National Bureau of Investigation, who deposed on the conclusions derived by him from his ballistic tests on the firearm recovered from Barros, its single round of live ammunition, three (3) slugs and three (3) empty shells, to wit: that the items possessed similar markings and that the bullets and shells were fired from the gun tested. [6]
- (3) Julita de Villa, a forensic chemist of the NBI, who testified that she conducted a paraffin test on the person of Barros and found both his hands positive for gun powder nitrates. [7]

(4) Capt. Joffrey E. Palalay, Chief of Records, Legal and Research Branch, Firearms and Explosive Unit of Camp Crame, who had issued a formal certification to the effect that Romeo Barros was not the licensee of any kind and caliber of firearm, per verification from the records of his unit, said records containing a master list of all firearm licensees throughout the country.[8]

Proof of the damages suffered by the family as a result of Barros' slaying of Jojo Mapalo was also given by the mother, Lydia Mapalo.

In his defense, Romeo Barros posited a different version of the tragic event. On the witness stand, he asserted that on the date and time in question he was drinking with Reynaldo Gonzales and some other friends in front of the town plaza near the grocery of Gonzales in the course of which a heated discussion ensued about the number of votes their respective political candidates would garner by the end of the day. Suddenly, Reynaldo drew a gun and pointed it upwards. Knowing that it was illegal to carry a firearm publicly on election day, Barros grappled with Gonzales for possession of the gun. While they were thus engaged, the gun came to be pointed to the south of the road at which juncture it accidentally went off three times. Barros eventually succeeded in taking control of the weapon, left the place and went home. He placed the gun on the rooster pen, intending to surrender it to the police authorities; but the intended surrender was overtaken by events; before he could go to the police, the latater came and confiscated the firearm.

Reynaldo Gonzales was recalled to the stand, as rebuttal witness. He belied Barros' version of the incident. He denied that the pistol was his. He reiterated his earlier testimony that it was Barros who was in possession of the gun, that he saw Barros walk up the road, stop in front of his (Gonzales') house, raise his arm and discharge the firearm at the Mapalos' house.

On November 20, 1990, the Trial Court rendered a decision finding Barros guilty of the charges against him.[9] The dispositive portion reads:

"WHEREFORE, in view of all the foregoing considerations, this Court finds the accused Romeo Barros y Baltazar guilty beyond reasonable doubt for the crime of murder contrary to Art. 248 of the Revised Penal Code and of Illegal Possession of Firearm and Ammunition contrary to Section 1 of Presidential Decree No. 1866 as amended.

"For the crime of Murder, the accused ** is hereby sentenced to suffer the penalty of Reclusion Perpetua and to indentify the heirs of the deceased Joseph Mapalo for actual damages in the total amount of P35,000.00; moral damages for P150,000.00; exemplary damages of P20,000.00; Attorney's fees of P20,000.00 and to pay the cost.

"For the crime of Violation of Section 1 of Presidential Decree No. 1866, the penalty should be that of paragraph 2 thereof considering that Murder was committed with the use of unlicensed firearm. Under paragraph 2 of Section 1 of P.D. No. 1866 the penalty imposable is death. However, since the death penalty has been abolished under the New Constitution, the penalty hereto lower in degree to that of the death penalty which is reclusion perpetua, should be imposed. The accused is therefore hereby sentenced to suffer the penalty of Reclusion Perpetua for the crime of Violation of Section 1 of Presidential Decree No. 1866 and to pay the cost.

"The firearm and ammunition seized from the accused are forfeited in favor of the government.

SO ORDERED."

The accused has appealed to this Court, insisting that his version of the occurrences is the truth and it was error for the trial court to convict him of the crimes charged. He reiterates his defense that there was no intention on his part to fire the gun in the direction of the Mapalos' residence; it accidentally discharged while he was grappling

with Reynaldo Gonzales for its possession. He asserts that the gun is not his, that he took it away from Reynaldo because he knew it was illegal for Reynaldo or for him to be in the possession of any firearm on election day, and that he really meant to surrender the same to the police.

The appeal must fail.

The Court rejects this tale supported by naught but appellant's bare word. Against the testimony of the three witnesses who positively pointed to him as the person who intentionally fired his gun in the direction of the Mapalo residence — namely, Mariden Milades, Isabelo Gonzales, Reynaldo Gonzales — appellant's uncorroborated story that the gun had accidentally been discharged as he was wrestling with Reynaldo for its possession, cannot prevail. Not only are the declarations in Court of said three (3) witnesses untainted by any material self-contradiction or other serious flaw, and entirely consistent with one another, but the Court also perceives no reason whatever for any one of them to testify falsely against appellant Barros.

There is yet another reason why appellant's version of the shooting is difficult to accept, and that is, that it was made public only when he testified in Court in his defense. He claims, to be sure, that he had told his story the CLAO lawyers now representing him. He does not however explain why he did not disclose it to his first lawyer, Atty. Arthur Galace, or to any of the police officers when he was taken into custody or at any other time afterwards. If his story of the accidental discharge of the firearm were true, the Court sees no rational explanation for Barros' reticence in revealing it to the authorities or his lawyer. Indeed, its immediate divulgence would have been the natural, expected reaction of an innocent individual wrongly suspected of a killing. All things considered, his story appears to be a last-minute attempt to exculpate himself by ventilation of a contrived and seemingly plausible explanation for the death of Jojo Mapalo.

The Court however cannot see its way clear to upholding the Trial Court's conclusion that the killing was attended by the qualifying circumstances of treachery and evident premeditation.

It is elementary that alevosia, to be appreciated, must be proved as clearly as the elements of the crime or crimes it is alleged to qualify. It must be proved that the accused had consciously and deliberately employed a form of attack to ensure the consummation of his objective without risk to himself from any defense the person assaulted could have made.[10] Under the established circumstances, it could not be said that Barros had deliberately adopted a manner of attack which would ensure the execution of the crime without risk to himself from any measures which his intended victim might take. Barros was in the middle of the road, in broad daylight, when he discharged two (2) volleys of three (3) shots each in the direction of the Mapalos' residence. The first three shots -- none of which hit any person — already placed Jojo Mapalo, his sister and his mother on their guard; in fact, Jojo had remarked to his mother at the time that they were probably the targets of the pistol shots. They could have taken steps to protect and defend themselves; actually, they saw Barros re-loading his gun and aiming it at their house again before discharging it at them a second time. Unfortunately, Jojo Mapalo was apparently a little late in taking cover, and was hit in the head by one of the bullets.

Neither may this Court appreciate the qualifying circumstance of evident premeditation against appellant. As with alevosia, evident premeditation must be established with as much certainty and clarity as the criminal act itself. It is necessary to prove (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit had clung to his determination and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[11] While the existence of the first and third requisites appear to have been adequately proven, there is some ambivalence in the proof about the second, there being no substantially appreciable interval of time between the first and second groups of shots directed at the Mapalos' house, such that the discharge of those two volleys within a minute or two

of each other might be considered as only one continuing event. In any event, even if the existence of all the elements of evident premeditation is conceded, it still cannot be appreciated against appellant for the reason that the actual victim was different from the intended one. It "is settled that evident premeditation cannot be appreciated in a case where, although the accused had planned the perpetration of the killing, the victim was different from the person whom the accused had originally intended to kill (See Aquino, the Revised Penal Code, Vol. 1, 1976 ed., p. 341, citing cases)."[12]

Now, appellant was also convicted by the Trial Court of illegal possession of firearm, in its aggravated form.[13] The evidence does convincingly prove that appellant is not a licensee of any firearm or ammunition and that Jojo Mapalo was slain with the unlicensed firearm in question. However, appellant may not in the premises be convicted of two separate offenses, but only of that of illegal possession of firearm in its aggravated form, in light of the legal principles and propositions set forth in the separate opinion of Mr. Justice Florenz D. Regalado, to which the Members of the Division, the ponente included, subscribe.

The indemnity for death awarded by the Trial Court should be increased from P35,000.00 to P50,000.00, conformably with prevailing doctrine.

WHEREFORE, the Trial Court's judgment in Criminal Case No. A-1381, convicting said appellant of the offense of murder, is SET ASIDE. The judgment of the same Trial Court in Criminal Case No. A-1389 sentencing appellant Barros to reclusion perpetua for the crime of illegal possession of firearm in its aggravated form, and decreeing the forfeiture in favor of the government of the firearm and ammunition seized from the accused, is AFFIRMED, and in addition, the appellant is ORDERED to pay the heirs of the victim the amounts of damages awarded by the Trial Court except that of the death indemnity, which is increased to P50,000.00.

SO ORDERED.

Regalado, Puno, and Mendoza, JJ., concur.

[1] TSN, November 2, 1988; pp. 3-6

[2] Records, Exh. A-1

[3] Rollo, pp. 36-37

[4] Branch 32, Hon. Leo M. Rapatalo presiding.

[5] See Records, Exh. A-1

[6] See Records, Exh. F-3

[7] See Rollo, P. 35

[8] See Records, Exh. P

[9] Rollo, pp. 27-59

[10] People v. Amaguin, 229 SCRA 166; People v. Ocana, 229 SCRA 341; People v. Salveron, 228 SCRA 92; People v. Guadran, 228 SCRA 583

[11] People v. Lug-aw, 229 SCRA 308; People v. Cardova, 224 SCRA 319; People v. Balatucan, 206 SCRA 81

[12] *People v. Dueño*, 90 SCRA 23, 37, citing *Peo. v. Mabug-at*, 51 Phil. 967 (1926), *Peo. v. Guevarra*, L-24371, April 16, 1968, 23 SCRA 58; *Peo. v. Guillen*, 85 Phil. 307, 318-319 (1950), *Peo. v. Umali*, 96 Phil. 185, 201 (1954).

[13] *People v. Caling*, G.R. No. 94784, May 8, 1992; *People v. Arce*, 227 SCRA 406

SEPARATE OPINION

REGALADO, J.:

The case at bar educes for collective reflection the writer's ponencia and reservation in *People of the Philippines vs. Leonito Macagaling y Atilano*,^[1] wherein the aforementioned accused was charged in three separate informations and was correspondingly convicted in a joint decision of three separate crimes, that is, homicide for the death of one victim, another count of homicide involving another victim and a third offense of illegal possession of the firearm allegedly used in the aforesaid killings, for which separate penalties were imposed by the trial court.

In the appellate review thereof, the Court affirmed the convictions for the two felonies of homicide, but acquitted appellant of the third charge of illegal possession for failure of the prosecution to discharge the onus probandi thereon. Of particular relevance to the present appeal is the discussion in the aforesaid case of Presidential Decree No. 1866 on the matter of illegal possession of a firearm, thus:

"Under Section 1 of Presidential Decree No. 1866, the gravamen of the offense is basically the fact of possession of a firearm without a license, it being assumed that it was so possessed with *animus possidendi*. We have heretofore explained that, in view of the text of said decree, the crime may be denominated as simple illegal possession, to distinguish it from the aggravated form wherein such firearm is used in the commission of a homicide or murder.^[2] However, to be liable for the aggravated form of illegal possession of a firearm which entails the capital punishment, such illegal possession must be the specific and principal offense charged, with the fact of killing being included in the particulars of the indictment."^[3]

The writer agrees with the categorization announced in *Caling* on the matter of the simple and aggravated forms of illegal possession of firearms. The felicitous use of the term "aggravated form" of illegal possession where that offense involves a killing by the illegal possessor of the unlicensed firearm should not, of course, be misunderstood as holding that the unlicensed firearm is in the nature of a generic aggravating circumstance, for in fact it is not so contemplated in Article 14 of the Revised Penal Code. It is only in Article 295 when simple robbery is committed with the use of licensed or unlicensed firearms on a road, street or alley, or under Article 296 when robbery in band is committed with an unlicensed firearm, that the use of such firearm is considered as a special aggravating circumstance. In effect, therefore, the nomenclature of aggravated illegal possession is used just for expediency, in the same manner as that of "qualified rape" under Article 335 when the sexual assault is attended by the circumstances therein which result in increased penalties.

On the other hand, the writer expressed his reservations on the doctrines announced in *Tac-an*, with a view to the reexamination thereof, not only with regard to the issue as to whether illegal possession of the firearm should be the principal offense charged with the killing being merely included in the particulars of the indictment, or whether it should be the other way around. The main concern was as to whether or not, whenever a killing is effected with the use of an unlicensed firearm, the malefactor should be punished separately for both offenses, with the unlawful taking of life to be proceeded against under the corresponding provision of the Revised Penal Code and the illegal possession of the firearm under Presidential Decree No. 1866. The case now before the Court

presents an opportunity for a reevaluation of the previous rulings on this issue.

A little legal archaeology would be in order. Presidential Decree No. 1866 took effect on June 29, 1983, imposing the stringent penalties therein by reason of the "upsurge of crimes vitally affecting public order and safety due to the proliferation of illegally possessed and manufactured firearms, ammunition and explosives." The pertinent portion of Section 1 thereof provides for simple possession in the first paragraph and for one of the aggravated forms in the second paragraph, as follows:

"The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose (of) or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition.

"If homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed."

x x x

At that time, the penalty for homicide was, as it still is, reclusion temporal in its full extent under Article 249 of the Code. The penalty for murder then was reclusion temporal in its maximum period to death under Article 248, although the death penalty was proscribed for some time by the 1987 Constitution. Thereafter, effective December 31, 1993, the penalty for murder was increased to reclusion perpetua to death when Article 248 of the Code was amended by Section 6 of Republic Act No. 7659.

Obviously, then, the single indivisible penalty of death provided by Presidential Decree No. 1866 was designed to impose, as it still imposes, a higher penalty whenever an unlicensed firearm was used as the instrument for the commission of either homicide or murder, and such penalty shall be applied regardless of any mitigating or aggravating circumstances.[4]

Under the dispositions heretofore made by the Court involving the crimes of homicide or murder through the use of an illegally possessed firearm, and the same is true with the case at bar, the following queries may be posed:

1. Should the crimes of homicide or murder, which are the end results, be punished separately from and in addition to the liability for illegal possession of the firearm as the instrument or the means employed?
2. On the other hand, should not the principal and sole offense be the aggravated form of illegal possession of a firearm under the second paragraph of Section 1 of Presidential Decree No. 1866, with the homicide or murder being absorbed therein as an integral element of the crime in its aggravated form?
3. If either homicide or murder and illegal possession of firearm are so charged in one and the same information, should they be considered and punished as a single offense of homicide or murder with the use of an unlicensed firearm, or as a case of aggravated illegal possession of firearm resulting in homicide or murder, with the death penalty to be imposed in either case?
4. If homicide or murder is charged in a separate information while aggravated illegal possession of firearm is made the subject of a separate indictment filed simultaneously with or prior or subsequent to the former, but with the respective informations on the killing and the illegal possession mutually alleging facts regarding the other offense as an attendant circumstance, should the accused be held liable for two distinct crimes regardless of whether the cases are jointly tried by the same court or separately by the two courts where the informations were independently filed?

On the first question, it is true that from the theoretical concept of the requisite mens rea, the killing as the result

of the criminal design arose from a specific criminal intent, that is, the *animus interficendi* or intent to kill. The illegal possession of the firearm requires a discrete and specific intent to possess the weapon, which is the *animus possidendi*, coupled with the physical possession thereof.

It would, therefore, appear at first blush that the two offenses having arisen from different criminal intents, this would be, under the philosophical bases for *concurso de delitos*, a case of material or real plurality under which different crimes have been committed and for each of which a separate criminal liability attaches. The flaw in this approach, however, is that although two crimes have been committed, they are not altogether separate or disconnected from each other both in law and in fact. The illegally-possessed firearm having been the weapon used in the killing, the former was at least the necessary, although not an indispensable, means to commit the other.

The situation thus borders closer to the concept of a complex crime proper, technically known as a *delito complejo*, rather than to the postulate of two separate crimes. It is true that former doctrines were to the effect that there can be no complex crime where one of the component offenses is punished by a special law. The rationale therefor was that in a complex crime, Article 48 of the Code prescribes that the penalty shall be for the gravest offense to be applied in its maximum period. Since, at that time, the penalties for crimes provided in special laws were not divided into periods, it would be impossible to apply Article 48.

That ratiocination no longer applies now, specifically with respect to the case at bar, since the penalties in Presidential Decree No. 1866 were all taken from the scale of penalties in the Code. The only possible difficulty in this novatory approach would be on the first kind of complex crime, that is, the *delito compuesto* since it exists "(w)hen a single act constitutes two or more grave or less grave felonies." The use of that particular term for the delicts committed bars the application of that form of complex crime to offenses under Presidential Decree No. 1866, since "felonies" are offenses provided and defined in the Code.

That objection would not, however, apply to a *delito complejo* since it is sufficient therefor that "an offense is a necessary means for committing the other." By these considerations, however, the writer does not mean to imply that a killing through the use of an illegally-possessed firearm is a *delito complejo* under Article 48 of the Code. As was carefully stated, such an offense merely borders closer to or approximates the concept of a *delito complejo*, but it thereby emphasizes the thesis that the offenses should not be considered as separate crimes to be individually punished under the principle of material plurality.

This premise accordingly brings up the second query as to whether or not the crime should properly be the aggravated illegal possession of an unlicensed firearm through the use of which a homicide or murder is committed. It is submitted that an accused so situated should be liable only for the graver offense of aggravated illegal possession of the firearm punished by death under the second paragraph of Section 1, Presidential Decree No. 1866, and it is on this point that the writer dissents from the holding which would impose a separate penalty for the homicide in addition to that for the illegal possession of the firearm used to commit the former.

If the possession of the unlicensed firearm is the only offense imputable to the accused, the Court has correctly held that to be the simple possession punished with reclusion temporal in its maximum period to reclusion perpetua in the first paragraph of Section 1. Where, complementarily, the unlicensed firearm is used to commit homicide or murder, then either of these felonies will convert the erstwhile simple illegal possession into the graver offense of aggravated illegal possession. In other words, the homicide or murder constitutes the essential element for integrating into existence the capital offense of the aggravated form of illegal possession of a firearm. Legally, therefore, it would be illogical and unjustifiable to use the very same offenses of homicide or murder as integral elements of and to create the said capital offense, and then treat the former all over again as independent

offenses to be separately punished further, with penalties immediately following the death penalty to boot.

The situation contemplated in the second query is, from the punitive standpoint, virtually of the nature of the so-called "special complex crimes," which should more appropriately be called composite crimes, punished in Article 294,[5] Article 297[6] and Article 335.[7] They are neither of the same legal basis as nor subject to the rules on complex crimes in Article 48, since they do not consist of a single act giving rise to two or more grave or less grave felonies nor do they involve an offense being a necessary means to commit another. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses.

On the other hand, even if two felonies would otherwise have been covered by the conceptual definition of a complex crime under Article 48, but the Code imposes a single definite penalty therefor, it cannot also be punished as a complex crime, much less as separate offenses, but with only the single penalty prescribed by law. Thus, even where a single act results in two less grave felonies of serious physical injuries and serious slander by deed, the offense will not be punished as a *delito compuesto* under Article 48 but as less serious physical injuries with ignominy under the second paragraph of Article 265.[8] The serious slander by deed is integrated into and produces a graver offense, and the former is no longer separately punished.

What is, therefore, sought to be stressed by such alternative illustration, as well as the discussion on complex and composite crimes, is that when an offense becomes a component of another, the resultant crime being correspondingly punished as thus aggravated by the integration of the other, the former is not to be further separately punished as the majority would want to do with the homicide involved in the case at bar.

With the foregoing answers to the second question, the third inquiry is more of a question of classification for purposes of the other provisions of the Code. The theory in *Tac-an* that the principal offense is the aggravated form of illegal possession of firearm and the killing shall merely be included in the particulars or, better still, as an element of the principal offense, may be conceded. After all, the plurality of crimes here is actually sourced from the very provisions of Presidential Decree No. 1866 which sought to "consolidate, codify and integrate" the "various laws and presidential decrees to harmonize their provisions" which "must be updated and revised in order to more effectively deter violators" of said laws.

This would be akin to the legislative intent underlying the provisions of the Anti-Carnapping Act of 1972,[9] wherein the principal crime to be charged is still carnapping, although the penalty therefor is increased when the owner, driver or occupant of the carnapped vehicle is killed. The same situation, with escalating punitive provisions when attended by a killing, are found in the Anti-Piracy and Anti-Highway Robbery Law of 1974[10] and the Anti-Cattle Rustling Law of 1974,[11] wherein the principal crimes still are piracy, highway robbery and cattle rustling. Also, in the matter of destructive arson,[12] the principal offense remains as arson although the same becomes a capital offense when, *inter alia*, death results as a consequence of the commission of any of the acts punished under said article of the Code.

In the present case, the academic value of specifying whether it is a case of illegal possession of firearm resulting in homicide or murder, or, conversely, homicide or murder through the illegal possession and use of an unlicensed firearm, would lie in the possible application of the provision on recidivism. Essentially, it would be in the theoretical realm since, taken either way, the penalty for aggravated illegal possession of a firearm is the single indivisible penalty of death, in which case the provision on recidivism would not apply. If, however, the illegal possession is not established but either homicide or murder is proved, then the matter of recidivism may have some significance in the sense that, for purposes thereof, the accused was convicted of a crime against persons and he becomes a recidivist upon conviction of another crime under the same title of the Code.

Lastly, on the matter of the offense or offenses to be considered and the penalty to be imposed when the unlawful killing and the illegal possession are charged in separate informations, from what has been said the appropriate course of action would be to consolidate the cases and render a joint decision thereon, imposing a single penalty for aggravated illegal possession of firearm if such possession and the unlawful taking of life shall have been proved, or for only the proven offense which may be either simple illegal possession, homicide or murder per se. The same procedural rule and substantive disposition should be adopted if one information for each offense was drawn up and these informations were individually assigned to different courts or branches of the same court.

Indeed, the practice of charging the offense of illegal possession separately from the homicide or murder could be susceptible of abuse since it entails undue concentration of prosecutorial powers and discretion. Prefatorily, the fact that the killing was committed with a firearm will necessarily be known to the police or prosecutorial agencies, the only probable problem being the determination and obtention of evidence to show that the firearm is unlicensed.

Now, if a separate information for homicide or murder is filed without alleging therein that the same was committed by means of an unlicensed firearm, the case would not fall under Presidential Decree No. 1866. Even if the use of a firearm is alleged therein, but without alleging the lack of a license therefor as where that fact has not yet been verified, the mere use of a firearm by itself, even if proved in that case, would not affect the accused either since it is not an aggravating or qualifying circumstance.

Conversely, if the information is only for illegal possession, with the prosecution intending to file thereafter the charge for homicide or murder but the same is inexplicably delayed or is not consolidated with the information for illegal possession, then any conviction that may result from the former would only be for simple illegal possession. If, on the other hand, the separate and subsequent prosecution for homicide or murder prospers, the objective of Presidential Decree No. 1866 cannot be achieved since the penalty imposable in that second prosecution will only be for the unlawful killing and further subject to such modifying circumstances as may be proved.

In any event, the foregoing contingencies would run counter to the proposition that the real offense committed by the accused, and for which sole offense he should be punished, is the aggravated form of illegal possession of a firearm. Further, it is the writer's position that the possible problems projected herein may be minimized or obviated if both offenses involved are charged in only one information or that the trial thereof, if separately charged, be invariably consolidated for joint decision. Conjointly, this is the course necessarily indicated since only a single composite crime is actually involved and it is palpable error to deal therewith and dispose thereof by segregated parts in piecemeal fashion.

ACCORDINGLY, the writer concurs in the present ruling which holds herein accused-appellant guilty only in Criminal Case No. A-1389 of illegal possession and use of an unlicensed firearm in committing homicide, not murder, with the corresponding penalty therefor under the second paragraph of Section 1, Presidential Decree No. 1866. He is gratified that, clarificatory of Tac-an and other holdings similar thereto, no further penalty is imposed for the killing of the victim as additionally charged in Criminal Case No. A-1381, for the reasons hereinbefore submitted.

[1] G.R. Nos. 109131-33, October 3, 1994.

[2] Citing *People vs. Caling*, G.R. No. 94784, May 8, 1992, 208 SCRA 821.

[3] As posited in *People vs. Tac-an*, G.R. Nos. 76338-39, February 26, 1990, 182 SCRA 601.

[4] Article 63, Revised Penal Code.

[5] As amended by R.A. No. 7659, this refers to robbery by reason or on the occasion whereof other crimes like homicide, rape, intentional mutilation, arson, and serious physical injuries are committed but for which respective composite crimes only one penalty is imposed.

[6] This is the composite crime of attempted or frustrated robbery on the occasion or by reason of which a homicide is committed but for both of which component crimes a single penalty is imposed.

[7] As last amended by R.A. No. 7659, this punishes, with a single penalty, rape with attempted, frustrated or consummated homicide, or with certain attendant circumstances, the penalty ranging from reclusion perpetua to death.

[8] *People vs. Lasala*, L-12141, January 30, 1962, 4 SCRA 61.

[9] R.A. No. 6539, August 26, 1972.

[10] P.D. No. 532, August 8, 1974.

[11] P.D. No. 533, August 8, 1974.

[12] Art. 320, Revised Penal Code, as last amended by R.A. No. 7659.

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